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The Review of Religions

Vol. XXXIV—No. 12

December 1935

CONTENTS

Ahmadiyya Community's Petiti

Against Offensive Remarks

made by

Sessions Judge, Gurdaspur,

in the Appeal

Attaullah Shah Bukhari

versus

The Crown

and

Lahore High Court Judgment ther

Editor :

GULAM FARID MALIK, M.A.

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بسم اللہ الرحمن الرحیم

نحمدہ ونصلی علی رسولہ الکریم

Ahmadiyya Community's petition against offensive remarks made by Sessions Judge, Gurdaspur, in the appeal Ata Ullah Shah Bukhari *versus* the Crown and Lahore High Court Judgment thereon.

Orders were pronounced on November 11 by Mr. Justice Coldstream, of the Lahore High Court, on the petitions of the Punjab Government and of the Ahmadiyya community filed by Sheikh Bashir Ahmad, Advocate, for the expungement of certain remarks passed in the course of the judgment by Mr. G. D. Khosla, the Sessions Judge of Gurdaspur, in the Appeal Ata Ullah Shah Bukhari *v.* Crown against, on the one hand, the Punjab administration and, on the other, the activities of the Ahmadiyya community.

The original case arose out of the anti-Ahmadiyya activities of a party of non-Ahmadi Muslims called the Ahrars, who held what was described a *Tabligh* Conference, on the outskirts of Qadian, the headquarters of the Ahmadiyya community, in October 1934. The President of this Conference, S. Ata Ullah Shah Bukhari, was prosecuted by the Crown for having made a speech which tended to create feelings of hatred and contempt between members of the Ahmadiyya community and other Muslims. The accused, after a lengthy trial, was convicted by the trying Magistrate and sentenced to undergo imprisonment for six months. On

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appeal the Sessions Judge reduced the sentence to one till the rising of the Court. In the course of the trial the accused had examined about 58 witnesses in his defence including the Head of the Ahmadiyya community, the *Nazirs* of the Sadar Anjuman Ahmadiyya, and other Ahmadis. The Sessions Judge's judgment adversely criticising the life and character of the Founder of the Ahmadiyya Movement and of its present Head, and the general activities of the Ahmadiyya community, formed the subject of the present revision petition in the High Court. The Government petition took exception to certain remarks by the Sessions Judge against the police and the general Government administration in so far as it related to Qadian.

The Government Advocate, Diwan Ram Lal, argued the case for the Government, and the Rt. Hon'ble Sir Tej Bahadur Sapru came from Allahabad to argue the petition filed on behalf of Ahmadiyya community by Capt. Mirza Sharif Ahmad. Other counsel for the Ahmadiyya side were M. Saleem, Sh. Bashir Ahmad, Ch. Asadullah Khan, M. Ghulam Mohy-ud-Din, Pir Akbar Ali, Advocates.

The Respondent, Ata Ullah Shah Bukhari, was represented by Sh. Muhammad Sharif and M. Mazhar Ali Azhar, Advocates.

We give below both the revision petition filed by Mirza Sharif Ahmad and Mr. Justice Coldstream's judgment on it.

Revision Petition

IN THE HIGH COURT OF JUDICATURE AT LAHORE

CAPTAIN MIRZA SHARIF AHMAD, son of HAZRAT MIRZA GHULAM AHMAD SAHIB, resident of Qadian, District Gurdaspur —PETITIONER.

versus

THE CROWN —RESPONDENT

Petition under section 561-A of the Criminal Procedure Code, for expunging the remarks made in judgment delivered by the

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Sessions Judge of Gurdaspur dated the 6th June, 1935, in Criminal Appeal No. 120 of 1935.

ATAULLAH SHAH BUKHARI,— CONVICT-APPELLANT

versus

THE CROWN,— RESPONDENT.

MOST RESPECTFULLY SHEWETH :—

1. That one Ataullah Shah Bukhari was convicted under section 153-A of the I. P. Code by Diwan Sukha Nand, Magistrate 1st Class, Gurdsapur, and sentenced to six months' rigorous imprisonment.

2. That the said Ataullah Shah Bukhari appealed to the Sessions Judge, Gurdaspur, who by his own order dated 6th June, 1935, partially accepted the appeal, and reduced the sentence.

3. That the passages in the judgment to which the petitioner objects are entirely unwarranted *inter alia* for the following reasons :—

(*a*) That the petitioner, or the Ahmadiyya community as a whole of which the petitioner is a member, was not a party to the case, and was thus precluded from placing the whole material which may have otherwise been produced.

(*b*) That the Community which is affected by the judgment of the learned Sessions Judge is a very important community which claims more than a million adherents, and has its centres in all parts of the globe.

(*c*) That the whole tenor of the judgment is so unduly offensive that it has caused the deepest anguish to the entire Community, and the judgment, which has been translated into Urdu by the Ahrars and has been published in hundreds of thousands, has done greater harm than the speech for which the accused has been punished.

(*d*) That it was beyond the province of the learned Sessions Judge to criticise religious beliefs or give his own estimate of them, nor was such a finding necessary for a proper

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decision of the case, and the learned Sessions Judge has gone out of his way in wounding the religious susceptibilities of a most loyal section of His Majesty's subjects.

(*e*) That the learned Sessions Judge has freely attributed the acts of individuals to the whole Community, and has used very intemperate language, and has overlooked the fact that he would not be justified in using such sweeping expressions against a community which in the circumstance could not place its defence before the Court.

4. That in para. 2 of that judgment after referring to the declaration by Hazrat Mirza Ghulam Ahmad, the father of the petitioner, of his claims to prophethood the learned Sessions Judge observes "Simultaneously with this declaration he assumed the role of the High Priest of Islam, (Passage marked A), and laid the foundations of a new sect, the members of which although they claimed to be Muhammadans, professed certain beliefs and doctrines at complete variance with the generally accepted tenets of the Muhammadan religion" (Passage marked B).

5. That passage A is inaccurate and not borne out by any evidence on the record, and constitutes an expression of opinion by the Court on the merits of the claims of the Holy Founder of the Ahmadiyya community, which is irrelevant for a proper decision of the case.

6. That passage marked B is inaccurate in substance and it is not true that the members of the Ahmadiyya community held views at variance with the generally accepted tenets of the Muhammadan religion.

7. That next sentence runs thus "the distinguishing feature of this sect which is variously known as Qadiani, Mirzai, or Ahmadi was implicit belief of its members in the prophethood of the Founder who was called Mirza (marked C).

8. That the words underlined are incorrect and constitute a slight of the Holy Founder of the Movement, nor is there anything on the record justifying this expression.

9. That the Sessions Judge further observed "there was

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naturally some opposition and the majority of Muhammadans resented the allegation of religious supremacy by the Ahmadi Founder. Non-believers in the new-fangled religion vehemently repelled the accusation of *Kafar* which was bestowed on them by the Mirza. The Qadianis, however, remained heedless to these foreign criticism and, secure in the local safety of their home town, flourished as well as they could in the circumstances. This comparative security of their position gave birth to pride amounting almost to arrogance on the part of the Qadianis. In order to enforce their argument and further their cause they called into play weapons which would ordinarily be termed highly undesirable. They not only intimidated the persons who refused to come within their fold with boycott and excommunication and occasionally threats of something worse, but they frequently fortified the process of proselytising by actually carrying out these threats. A volunteer corps was established in Qadian with the object probably of giving sanction to their decrees." (Passage marked D).

10. That the whole passage is inaccurate and contrary to the facts on the record, and it is not clear how the learned Sessions Judge has come to this finding. The expression " arrogation of religious supremacy by the Ahmadi Founder," denotes only the high feelings of the learned Sessions Judge against the Ahmadiyya community, and similar is the case with the expression " new-fangled religion." It is incorrect and untrue in fact that the Holy Founder of the Ahmadiyya Movement, to begin with, conferred any *Fatwa* of *Kufr* on those who did not accept his claims to be true, and to which such of his non-believers had to reply. There was neither pride nor arrogance in the Ahmadis for any comparative security which they enjoyed. It is untrue and in fact stands contradicted by the record that they intimidated persons who refused to come into their fold, or used boycott or excommunication for achieving that object. Nor was any volunteer corps established for the purpose of carrying out their decrees.

11. That continuing the learned Sessions Judge observes " they even assumed judicial functions and dealt with cases, civil and criminal. In criminal cases punishment was awarded and executed. Peoples were actually turned out of Qadain. (Passage marked E).

12. That the passage does not correctly represent the evidence

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on the file. The word 'assumed' denotes exercise of authority which has not the sanction of law, which is not correct. The word 'enforced' denotes exercise of coercion for including parties to submit to their jurisdiction, which again is entirely unfounded and in fact contradicted by the record. The expression 'punishment awarded and executed' has also similar import, which again is incorrect, the facts on the record only indicate that such members of the Ahmadiyya community who wanted to have their disputes settled by private arbitration placed the matter before the Ahmadi Qazi. Similarly non-cognizable offences committed by any member of the Ahmadiyya community were dealt with by the Ahmadi Qazi in case the parties placed the matter before him. In many cases in which any of the party affected by a decision of the Qazi had chosen not to abide by it, the parties were referred to seek redress from British Courts. In no case was any force used for making the parties abide by the decision of the Qazi. This procedure was unexceptionable inasmuch as it has constantly been the policy of the Government to encourage decision of disputes out of Court, and thus save the parties from entering on wasteful litigation.

13. That it is entirely unfounded and incorrect to state that any person was turned out of Qadian. There is no case of any non-Ahmadi having been asked not to stay at Qadian, and if in the interests of the Community any such suggestion was made to a member of the Community and he had chosen not to act on the suggestion no force was ever used against such person. In fact there are cases of persons who were asked to leave Qadian for sometime, but they declined to act on the suggestion and are at Qadian even to-day.

14. That in the following para. of the judgment the learned Sessions Jugde makes the following observation "at least two individuals were turned out of Qadian, their town, because they did not fall in with the views of the Mirza. They are Habibur-Rahman D. W. 38 and Ismail. There is on record a letter Ex. D. 3. 33 written by the present Mirza himself ordering that Habibur-Rahman P. W. 28 was not allowed to come in Qadian.

15. That the above observation of the learned Sessions Judge is inaccurate and not supported by the record. While Habibur-Rahman could not be said to have been turned out of Qadian,

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the latter was never asked to leave Qadian, which would show that nobody is made to carry out such suggestions.

16. It is also admitted by D. W. 20 that "Ismail was excommunicted and not allowed to enter Qadian" (Passage marked F/2). The above observation of the learned Sessions Judge is not borne out by the record and is in fact incorrect.

17. That the learned Sessions Judge has further observed at page 4 of his judgment that, "Bhagat Singh D. W. 49 stated that he was assaulted by the Mirzais. One Shah Gharib was beaten by Qadianis and when tried to start a case nobody came forward to give evidence on his behalf" (Passage marked G).

18. That the above observation of the learned Sessions Judge attributes the acts of individuals to the whole Community and is open to grave objection on the ground that it is not a fact that Gharib Shah was beaten by the Qadianis or that he tried to start a case but no witnesses came forward. The facts as stated by the learned Sessions Judge are not borne out by the facts on the record.

19. That again the learned Sessions Judge on the same page further observes "decrees of court are enforced and there is one instance of a decree for the sale of a house having been executed. Privately stamped paper is manufactured, sold and used for petition to the Mirza". The above observation of the learned Sessions Judge is based on no evidence on the record. There is nothing on the record to show that the decrees are enforced, nor is there anything on the record showing that in execution of a decree any house was sold. No private stamped paper was ever manufactured, sold and used for petitions to the Head of the Ahmadiyya community.

20. That the learned Sessions Judge observes further, referring to a certain Abdul Karim that "his story is a veritable tale of woe. This man embraced the Ahmadiyya religion and went to Qadian. There, however, he became a prey to religious doubts and renounced the Ahmadiyya faith. Then his persecution started. He began to edit a paper called *Mubahalah* which aimed at criticising the cult of the Ahmadiyya community. The Mirza in a speech reported in Ex. D. Z/39 prophesied and compassed the death of the publishers of the *Mubahalah*. This speech made reference to the

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people who were ready to kill for the sake of their religion. A murderous attack was made on Abdul Karim soon after this but he escaped" (Passage marked H).

21. That the above observations of the learned Sessions Judge are entirely inaccurate and not supported by the record. Abdul Karim never embraced the Ahmadiyya creed and went to Qadian. It was his father who had accepted the Ahmadiyya creed and migrated to Qadian. He was never persecuted by the Ahmadis nor did his paper the *Mubahalah* aim at criticising the cult of the Ahmadiyya community. The paper aimed at vilifying the private life of the Head of the Ahmadiyya community and the female members of his household and used filthiest and the foulest language which could not but give the gravest provocation to the members of the Ahmadiyya community, a fact which was mentioned even by their Lordships of the Lahore High Court while dismissing the appeal filed by Mohammad Ali against the sentence of death awarded to him by the then Sessions Judge of Gurdaspur. It is violently unjust and untrue to ascribe to the Head of the Ahmadiyya community as compassing the death of Abdul Karim. It is doing great violence to the language of Ex. D. Z/39 to read it as compassing the death of Abdul Karim or that it made reference to any people who were ready to kill for the sake of religion. It is gravely misleading to suggest that soon after the sermon contained in EX. D. Z/39 a murderous attack was made on Abdul Karim. The order in which the learned Sessions Judge has stated all these so-called facts suggests the inference that there was some conspiracy to kill Abdul Karim and the Head of the Ahmadiyya community was a party to that conspiracy. The facts as stated as well as the inference deducible from them are entirely untrue and based practically on no evidence.

22. That the learned Sessions Judge further on makes the following observations at page 5 of his judgment, the reference being to the murder of Mohammad Hussain, "the death sentence was in fact carried out and after his execution the dead body was brought to Qadian and buried in great style in what is called the *Bahishti Maqbara* (the heavenly graveyard). The murder was extolled and the act of the murderer was praised in 'Alfazal', the organ of the Ahmadiyya community. It was given out that the murderer was not guilty and that he had escaped the calumny of death of expiring before the event. God in His justice had thought

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fit to take away his life before he underwent the ignominy of hanging. The Mirza when examined in Court with respect to this incident told a different tale and stated that the murderer of Mohammad Hussain was given a decent burial as he had repented of his offence and was purged of his sin. Ex. D. Z/40, however, contradicts this and the intentions and attitude of the Mirza are plain from the expression of his views as set out in D. Z/40. Incidentally the contents of his document amount to contempt of the Lahore High Court." (Passage marked 1.)

23. That the above passage consists in part of distortion of facts and is untrue in other parts. The murder was never extolled nor the act of the murderer praised in the " Alfazal." It is incorrect to state that the murderer was buried in great style and further that the Head of the Ahmadiyya community had stated that a decent burial was given to Mohammad Ali as he had repented and was thus purged of his sin. The facts are that every Ahmadi who wills away at least 1/10th or at the utmost 1/3rd of his property for charitable purposes in favour of the Sadar Anjuman Ahmadiyya, Qadian, and agrees to pay a similar portion of his income if any, is buried in the *Bahishti Maqbara*. Every such person who dies there, it is customary with the Head of the Ahmadiyya community to accompany the bier and participate in the funeral ceremony. There was nothing unusual in his doing so on this occasion and it is in fact true that Mohammad Ali had repented of his sin and paid the penalty for it with his life and therefore his shortcomings in this respect were condoned. Ex. D. Z/40 does not in any way contradict the version in connection with death of Mohammad Ali nor is there anything in Ex. D. Z/40 which could indicate any intention or attitude of the Head of Ahmadiyya community which could be open to any objection. No contempt of the Lahore High Court could be inferred from the writing in question.

24. That the learned Sessions Judge further observes at page 6 of his judgment " Mohd Amin, although he was an Ahmadi, had incurred the displeasure of the Mirza and was therefore not a *persona grata*" (Passage marked J.) That the above observation of the learned Sessions Judge is without foundation and goes beyond the record.

25. That the petitioner thinks that no useful purpose will be served to repeat the passage against which the Government has moved and is content with the observation that these passages in so

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far as they affect the Ahmadiyya community, are entirely untrue and not supported by the record.

26. That the learned Sessions Judge further on observes, "after Abbul Karim was turned out of Qadian, his house was burnt down and an attempt was made to demolish it in a quasi-legal manner by obtaining an order from the Small Town Committee of Qadian. These regrettable incidents point to a state of lawlessness accompained by arson and murder in Qadian. Add to this the circumstance that the Mirza of Qadian spoke of the millions of Muhammadans who did not believe in his supermacy in the most abusive language. His writings furnish a curious commentary on the manners and methods of a pious high priest who not only claims to be a Prophet but professes to be the chosen one of God, Messihus Sani (the second Messiah)" (Passage marked K).

27. That the above observations of the learned Sessions Judge are not supported by the record and are untrue or mere distortion of facts. Abdul Karim owned no house nor was he turned out. The house being in a dilapidated condition, the action taken by Small Town Committee was perfectly correct and legal. There has never been a state of lawlessness accompanied by arson and murder at Qadian. Apparently the learned Sessions Judge got confused here. The various incidents to which he had alluded refer to the last five or six years and the Holy Founder of the Ahmadiyya Movement died in the year 1908. The learned Sessions, Judge has, however, made reference to what he considers the Founder of the Movement had stated about those who did not believe in his supremacy when estimating events of much later date and has consequently committed a grave blunder. It is entirely wrong to state that the Holy Founder of the Ahmadiyya Movement had used most abusive language against those who did not believe in his supermacy. There is not a tittle of evidence on record to support this observation. It is not the province of the learned Sessions Judge to sit in judgment on religious tenets or practices of a community much less to give his own estimate of the comparative study of religion in a case like this. The concluding part of the passage is most offensive and has given grave offence to the entire Community which reveres the Holy Founder of the Movement as a Prophet and holds him dearer and nearer than their lives.

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28. That at the bottom of page 7 of his judgment the learned Sessions Judge has made the following observation when referring to the Ahrar Tabligh Conference at Qadian, "this step was naturally resented by the Qadianis and they made a bold attempt to stop the Conference from being held altogether. *The Ahrar Conference had acquired land of one Ishar Singh for the purpose of their meeting.* The Qadianis took possession of the land and built a wall on it. This deprived the Ahrars of the only piece of land in Qadian. They were therefore forced to convene their meeting at a spot about a mile from Qadian. The building of the wall shows the bitterness of the feelings that obtained between the parties at the time and the arrogance of the Ahmadis who felt that they were immune from the lawful consequences of their high-handedness" (Passage marked L).

29. That barring the sentence underlined in the passage the facts stated are against the record and unjustifiably accuse the Ahmadis of high-handedness, etc. The Ahmadis had never made any bold attempt to stop Ahrar Conference altogether. They never built a wall on the land of Ishar Singh nor were the Ahrars forced to convene a Conference at a distance of a mile from Qadian. The petitioner had made offer of his own land for the purpose to the District Magistrate and the Superintendent of Police, Gurdaspur, but it appears that on administrative grounds the District officers preferred the locality, where the Conference was held. The accusation of high-handedness of the Ahmadis does not arise since no wall was built on the land of Ishar Singh.

30. That at page 14 of his judgment the Sessions Judge makes the following observation, "the Mirza, it appears, was in the habit of taking a certain tonic called Plomer's tonic wine and on one occasion ordered his correspondent to get it for him from Lahore. There is also some reference to *yaqooti* in one or two other letters. The present Mirza has admitted in his evidence that his father did on one occasion take Plomer's tonic wine and was what might be described a bon-vivant". (Passage marked M).

31. That there is no evidence on the record to show that the Holy Founder of the Ahmadiyya Movement was in the habit of taking a certain tonic called Plomer's tonic wine. The findings of the Sessions Judge on the point are not supported by the record. It is a case of gross abuse of judicial privilege for the Sessions Judge to

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use such offensive expressions as *bon-vivant* about the holy person of the Founder of the Ahmadiyya Movement whom hundreds of thousands of His Majesty's loyal subjects regard as a Prophet and the embodiment of all that is good and virtuous. It is not within the province of a court to pass such strictures against Founders of religious movements and the observation in question has caused the deepest anguish to the entire Ahmadiyya community.

32. That again towards the concluding part of his judgment the learned Sessions Judge observes "as regards the sentence it is only necessary to take into account the conditions obtaining at Qadian and the extreme resentment which the millions of Muhammadans of India experienced on being called unbelievers and swine by the Mirza and by their women being compared to bitches, and I am inclined to consider that the offence of the appellant is only a technical one". (Passage marked N.)

33. That the learned Sessions Judge is wrong in holding that the Holy Founder of the Ahmadiyya Movement called his non-believers swine and compared their women-folk to bitches, and in doing so has done the Holy Founder of the Ahmadiyya Movement and the Ahmadiyya community grievous wrong. The observation is not supported by the record and is untrue in fact.

34. That the learned Sessions Judge has erred in describing the Holy Founder of the Ahmadiyya Movement as 'the Mirza' so frequently in his judgment and by doing so has hurt the feelings of the members of the Ahmadiyya community who regard him as a Prophet from God.

35. That the findings of the learned Sessions Judge are based obviously on a record which is incomplete, and the petitioner is prepared to prove by producing all available material that there is not the least foundation for the passages objected to by the petitioner in case this Hon'ble Court is prepared to remit this case for such enquiry before some English Sessions Judge.

36. That the retention of the passages objected to in the judgment will be an abuse of the process of law and a denial of justice to the petitioner, and it is accordingly prayed that this Hon'ble Court may be pleased to order that the passages objected

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to may be expunged from the judgment, or such other order may be passed as may secure the ends of justice.

Lahore, 10th September 1935.

High Court Judgment

This judgment will dispose of the two petitions for revision No. 182 and No. 225 of 1935.

In 1891 (I take the date and the following historical facts here stated from 'Chiefs and Families of Note in the Punjab' published under the order of the Punjab Government) Mirza Ghulam Ahmad of Qadian in Gurdaspur District, a grandson (son—*Ed*) of Ghulam Murtza, a General of the Sikh Darbar, founded a religious movement and proclaimed himself to be the Promised Messiah of the Muslim Faith. He won over a large number of people to his tenets and his followers, who were known as Qadianis, Mirzais or Ahmadis, numbered some hundreds of thousands in Punjab and elsewhere. The Mirza was the author of many works in Arabic, Persian and Urdu in which he combated the doctrines of Jihand (Jehad—*Ed*). "His life," to quote the book mentioned, "was for many years a stormy one as he was constantly involved in disputes and litigation with his religious opponents. By the date of the death, which took place in 1908 he had attained a position in which he commanded the respect even of those who disagreed with his views." He was succeeded as head of the sect by Maulvi Nur-ud-Din on whose death in 1914, Mirza Ghulam Ahmad's son Mirza Bashir-ud-Din Mahmud Ahmad was elected as his spiritual successor, or Khalifa. The number of people professing the Qadiani creed has increased considerably. Their headquarters remain in Qadian, the whole of which, according to the defence evidence, belongs to the Mirza Sahib's family in proprietary rights.

Of the population of Qadian, about 9,000, some 8,000 are said to be Qadianis by religion, the other Mohammadans numbering 400 or 500. The Khalifa and his disciples naturally exercise great influence in Qadian and are in a position to bring strong social pressure to bear upon individual residents of the town.

It is not disputed that from the time when the new religion was founded the claim of the Mirza Sahib to be the Promised

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Messiah has offended and been resented by the orthodox Mohammadans, between whom and the Qadianis there has been constant friction evidenced by published writings, often of an abusive character, on both sides. In 1923 there was a conference of orthodox Mohammadans at Qadian, which was brought to an end by rowdyism.

Ahrar Conference

In 1934 the Ahrars, a body of Mohammadans who take an active interest in the spread of their religion and some of whom had recently settled in Qadian decided to hold another conference in Qadian. At that time dissension between them and the Qadianis had reached an acute stage. The Ahrars obtained permission from one Ishar Singh, a resident of Qadian, to hold it on land in his possession, but the Qadianis prevented this by building a wall on the village land round the site. Unable to find another site in Qadian the Ahrars arranged for the Conference to be held on the playground of the D.-A. V. High School premises in Rajada, a village a mile from Qadian. Here the Conference began on the 21st of October, 1934, on the evening of which day Syed Ata Ullah Shah Bukhari, the president, addressed an audience of many thousands for five hours. For making this speech, which was a bitter attack in scurrilous language upon the Qadianis, their leaders and their religion, Sayed Ata Ullah Shah was prosecuted under section 153-A, I. P. C. At his trial he pleaded that his speech had been wrongly reported and that his intention had been to spread the true religion of Islam.

Irrelevant Evidence

It was pleaded by his counsel that his object was to put an end to a reign of terror prevailing in Qadian, where all sorts of crimes were being committed and where an independent administration had been set by up the Mirzais, who had their own courts of justice. Much evidence was produced to prove the truth of this assertion as well as evidence to show that Mirza Ghulam Ahmad had used abusive language towards those who combated his doctrines. Mirza Bashir-ud-Din Mahmud was called as a defence witness and subjected to a lengthy examination. A mass of wholly irrelevant evidence relating to the tenets of the two religions was brought on to the record, and in the pretence of a plea of justification, the attack upon the Qadianis and their religion was continued in Court.

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S. Ata Ullah Shah was convicted and sentenced to six months' rigorous imprisonment. He appealed. The learned Sessions Judge, Gurdaspur, found it proved that S. Ata Ullah Shah's intention had been to criticise the Mirza Sahib and his followers and also to rouse his hearers to take action against the Qadianis and redress their own wrongs, but that he had "said things which could have no other effect but to rouse hatred of the Ahmdis in the minds of his hearers," that "the professions of peace in his speech alternated with abuse and wit of a very low order, which could only induce the audience to hate the Ahmadis," and that he had gone beyond the bounds of legitimate criticism and was, therefore, liable under the law. It is to be presumed that he found that the explanation to section 153-A had no application. At the same time he found that the speech contained passages "which might be called very just criticism of the doings of the Mirza." He maintained the conviction, but, to quote his judgment 'taking into account the conditions obtaining in Qadian and the extreme resentment which the millions of Mohammadans of India experienced on being called unbelievers and swine and their women being compared to bitches' he considered that the offence committed was merely technical and reduced the sentence to imprisonment for the day.

In the course of his judgment the learned Judge referred to a number of incidents in Qadian about which evidence had been produced in defence to prove the truth of the allegations in the speech about the state of affairs in that place and made observations derogatory to the Khalifa and his followers and condemning the behaviour of the Government authorities. He delivered judgment on the 6th June, 1935.

The Crown did not apply for an enhancement of the sentence, a course which would have laid the Sessions Judge's judgment open to revision from all points of view but, on the 9th August, the Government Advocate presented the petition No. 182 asking this Court, in exercise of its powers under Section 561-A of the Criminal Procedure Code, to expunge certain of these observations from the judgment on the ground that they were not based on evidence, were without foundation and were untrue in fact and cast a serious reflection upon Government.

The petition (petitioner?) also prayed that in any case, if

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necessary, the case be remitted for further inquiry so as to afford an opportunity to Government to show that the remarks of the learned Sessions Judge were without foundation and substance."

A month later Captain Mirza Sharif Ahmad, brother of Mirza Bashir-ud-Din Mahmud, submitted the petition No. 225 asking for a large portion of the judgment to be expunged on the ground that the retention of it would be an abuse of the process of the law, and a denial of justice to the petitioner, who was not a party to the case and was not in a position to produce evidence to rebut that put forward by Sayyad Ata Ullah Shah in defence. The petition No. 182 was accompanied by an affidavit by the Chief Secretary to Government, denying the truth of the observations of the Sessions Judge and stating the true facts. The petition No. 225 was also accompanied by an affidavit by the petitioner disputing the correctness of the observations objected to and describing the judgment as more offensive than the speech for which Sayyad Ata Ullah Shah was prosecuted.

The Crown had given notice to Sayyad Ata Ullah Shah of its petition and as some of the passages sought to be expunged put forward grounds for the leniency with which he had been treated, his counsel was permitted to reply to the arguments addressed to me in support of both petitions.

Law Discussed.

That a High Court has an inherent power to expunge a portion of a judgment by an inferior court is now beyond dispute and this power has been frequently exercised by this Court since Section 561-A was inserted in the Code of Criminal Procedure in 1923. The power is unbounded by the law, which expressly gives the Court authority to make "such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice."

On the other hand this jurisdiction has always been regarded by the High Courts as one of an extraordinary character to be exercised with care and caution in exceptional cases, because, as was observed by Tek Chand, J. in *the matter of Daly* (I. L. R. 9 Lah. 269) it is of the utmost importance to the administration of justice that courts should be allowed to perform their functions

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freely and fearlessly and without undue interference by this Court and because in weighing evidence and in arriving at conclusions on questions of fact lower courts have often to make remarks which reflect adversely on the character of witnesses.

The judgments in *Amar Nath* v. *Crown* (I. L. R. 5 Lah. 476), *Banarsi Das* v. *Crown* (I. L. R. 6 Lah. 166) and in *the matter of Daly* to which reference has been made above indicate the principles upon which this Court has acted in expunging objectionable passages. In the case *Amar Nath* v. *Crown* a Sessions Judge had observed in his judgment that a witness, a police officer, had been guilty of perjury. The remark was based upon a police diary which was not properly upon the record and in ordering the passage containing it to be expunged Fforde, J. observed that a judge had no right to test evidence in court by material which has not been properly made legal evidence and that if the judge considered that the witness had lied he should have asked him for an explanation before charging him with the crime of perjury.

In *Benarsi Das* v. *Crown*, which was also decided by Fforde, J. a passage in the judgment of a magistrate was expunged on the grounds that it would be a denial of justice to allow the reflections made upon the character of a person to stand where the person is neither a witness nor a party to the proceedings, and has had no opportunity of being heard, and where the reflections are based upon no legal evidence. In *the matter of Daly* a magistrate had remarked in his judgment that he was convinced that Daly and other clerks employed with him had been sharing misappropriated money and that Daly had been neglecting his duties in a reckless manner. Daly had been in the witness-box and cross-examined at great length and no question had been put to him by either counsel or by the Court from which it could be inferred that he was privy to the offence for which the accused was being tried. The learned Judge found that there was no justification for holding that Daly had shared the money with the accused and other clerks and he expunged the remarks to this effect. He found on the other hand that there was evidence from which the inference that Daly was grossly negligent in the discharge of his duties could have been drawn and he declined to expunge the Magistrate's remark about his carelessness, observing that he could only order its expunction if he came to the conclusion that it was wholly unwarranted by the record, which he was unable to do. A similar view was expressed

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by Sulaiman, J. in *Pancharran Banerji* v. *Upendra Nath Battacharya* (I. L. R. 49 All. 254) in ordering such objectionable words to be expunged from the judgment of a Sessions Judge. While observing that he saw no reason why the inherent power possessed by the High Court emphasized by Section 561-A of the Cr. Procedure Code, should not comprise a power to order a deletion of passages which are either irrelevant or inadmissible, and which adversely affect the character of persons before the Court, the learned Judge went on to add that such jurisdiction can be exercised only when there is no foundation whatsoever for the remark objected to, and not where it is a matter of inference from evidence. The question what principles should be applied in dealing with an application by a witness to have certain remarks against his character made by a Sessions Judge expunged from the judgment was discussed by a Division Bench of the Sind Judicial Commissioner's Court in *K. S. Mohammad Hussain* v. *Emperor* (118 I. C. (1929) 746). The application had been made by a Deputy Superintendent of Police. The conclusions arrived at by the Bench were expressed as follows :— 'Obviously if an unjustifiable attack be made on a person who has had no opportunity of being heard in his own defence, and his remark is irrelevant and separable, it can and should be expunged, especially if he is neither a party nor a witness. But it is not so easy to expunge remarks which, though unjustified, are relevant, and we do not think that it is possible to delete them unless they are separable, that is to say, if they form an integral part of the argument. A Judge or Magistrate is bound to record reasons for his decision and even in the interests of justice we cannot delete those reasons and leave the decision without its reasoned basis. We must operate but we must not kill the patient. The prosecution sought to prove a confession and the production of property and if that evidence had been accepted the Court was bound to convict. The learned Sessions Judge refused to believe the Zamindars who swore to the confession, and gave his reasons. But the Zamindar's word was confirmed by that of the Deputy Superintendent of Police who had heard the confession and seen the production. Logically, then the Sessions Judge was bound to express his opinion of the Deputy Superintendent of Police and he did so. We do not agree with his view, but since we cannot say that the remarks were irrelevant or expunge the passage without ruining the argument we cannot legitimately interfere * * * * * we think we are justified in taking the view that passages must

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only be deleted if they are irrelevant and do not form an integral part of the judgment." In dismissing the application the learned Judges expressed the opinion that the remarks made against the applicant were wholly unjustified.

In 1923 another Division Bench of the Sind Court, in dismissing a similar application allowed the judgment to stand subject to the comment that, in its opinion the strictures made in the passage objected to exceeded anything which had been justified by the record and ought not to have been made until an explanation of the person adversely affected had first been heard. The learned Judges also observed that the learned Additional Sessions Judge permitted himself to use language which was injudicious and uncalled for (*Teju Mal Narain Das* v. *Emperor*, A. I. R. 1933 Sind 91).

These judgments are ample authority for holding that it is the duty of the High Court in order to prevent abuse of the process of the Courts and secure the ends of justice, to delete passages commenting adversely upon a person who is not a party to the proceedings and has not had a fair opportunity of being heard and also to delete such passages when they are based upon no evidence, or evidence not properly upon the record. But, with due respect to the learned Judges whose judgments indicate that the power to expunge is limited to such cases, and while agreeing, again with due respect, with the view expressed by Ferrers, J. C. in the case last cited that it is desirable that a judgment once delivered should remain in the shape in which it was first published, and averse as I am from extending in practice the exercise of our peculiar power beyond the limits adopted hitherto I must say that there appears to me no good reason why it should not be used to delete passages which though based on evidence damage the character of a person, are wholly irrelevant to any point in issue and which a Court has unnecessarily gone out of its way to include in a judgment. Further I have no doubt at all that where its notice has been drawn to a judgment which appears to it to be couched in language injudicious and uncalled for, this Court can, and ought to, express its own opinion in the matter, whether any passage is or is not ultimately expunged.

Unfair and Exaggerated

The language of the judgment in the present case is in some

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places such as must tend to raise a doubt whether the learned Judge approached the case from a perfectly fair point of view. Much of it is exaggerated. This is clear from some of the passages to which objection has been taken. As an instance, he describes the Qadiani creed in the beginning of the judgment, where it sets forth some facts which in the opinion of the Judge have a bearing on the points at issue as 'new-fangled'. The merits or demerits of the Qadiani beliefs were not and could not in this case be a matter for the Court's consideration. This is unfortunate, and the more to be regretted because the circumstances of the time (and this is a matter of common knowledge) are such as to necessitate especial care that, in cases which have assumed a communal aspect the proceedings in courts and the language of their judgments should not themselves promote the feelings of enmity the promotion of which by others it is their duty to punish under the law.

Passages against Government

I come now to deal with the passages which the Court has beed asked to expunge. I take first the petition submitted by the learned Government Advocate.

After referring to the death of one Mohammad Amin, who was killed in an affray in Qadian, the judgment proceeds :—

"A report was made to the police but no action whatever was taken. It is idle to argue that the murderer was acting in self-defence for this is a matter which can only be determined by the trial Court. Ch. Fateh Mohammad has, curiously enough, admitted in Court on solemn affirmation that he killed Mohammad Amin. The police, however, could not take any action in the matter and it is suggested that so great is the power of the Mirza that no witnesses dared come forward and state the truth."

That Mohammad Amin died in a fight with Fateh Mohd, (D. W.21) the President of the Sadar Anjuman Ahmadiyya in Qadian is in evidence. According to Fateh Mohammad, Mohammad Amin had made a murderous attack upon him, that is to say, he was killed while Fateh Mohammad was defending himself. It appears that the learned Sessions Judge has based his observation that no action whatever was taken solely on the fact that Fateh Mohammad was not sent for trial. Now there is no evidence that no action was taken. It is possible as the learned Judge has himself suggested that this was

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because witnesses were afraid of the power of the Mirza. In any case the fact that there was no prosecution in Court is not evidence that no action whatever was taken. The police officer whose duty it was to investigate the case was not, it seems, examined. The executive authorities were not on trial and there was no reason why they should in this case call evidence to show that investigation was made, unaware as they were of the inference which the appellate court was going to draw from Fateh Mohammad's evidence. The Chief Secretary's affidavit shows that it is untrue that no action was taken by the local authorities at Gurdaspur in connection with Mohammad Amin's death. There being no evidence to support it the remark that no action whatever was taken might properly be deleted. The removal of these words will, however, mutilate the judgment so as to render meaningless the rest of the passage which I am asked to expunge, but for the expunging of which there is no good reason apparent. I therefore leave the passage in the judgment with these comments which I have no doubt will satisfy the learned Government Advocate.

The next passage to which the petition relates runs as follows (the learned Sessions Judge is referring to the state of affairs in Qadian) :—

" The authorities appear to have been affected by an extraordinary degree of paralysis and the supreme authority of the Mirza in matters secular as well as religious was never questioned. Complaints were on different occasions made to the local officials but no redress was forthcoming. There are on record one or two such complaints but it is needless to refer to their contents and it is sufficient for the purposes of this case to state that definite allegations of tyranny prevailing in Qadian were made and no notice appears to have been taken of them."

These remarks the learned Sessions Judge based upon evidence that criminal and civil cases were tried by courts constituted by the Qadiani community in Qadian, the procedure of which courts was based on that followed by British Indian Courts, that a Qadiani volunteer corps had been organised, and upon the absence of evidence that notice of complaints against the Qadianis was taken by the authorities.

Here again it is contended by the learned Government

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Advocate that the remarks throwing discredit on the executive authorities are not only baseless but that such evidence as is on the record relating to their behaviour proves that action was taken when cognizable cases were reported. The Chief Secretary's affidavit is to the effect that complaints and allegations have always been made the subject of enquiry, and Government have constantly endeavoured to enforce the law without fear or favour, that on receipt of information that so-called courts had been set up in Qadian by the Ahmadi community, they had the legal position examined, that they were advised that the proceedings in criminal cases were not open to legal objection so long as they related to the settlement of non-cognizable and compoundable cases by consent of the parties and that so far as civil cases were concerned they were not open to legal objection so long as the reference to the court was by consent of the parties and of the nature of arbitration. Government caused the Ahmadiyya community to be informed that the proceedings would be open to legal objection if they referred to cognizable criminal cases or if the so-called criminal courts assumed powers of inflicting punishment which would bring them within the mischief of the law and it was also made clear to them that any complaint that any of the so-called courts had come within the mischief of the law would be fully investigated. The Community was also advised that these so-called courts should not use summonses or other forms which closely resembled those in use in Government Courts. The affidavit also states that the Government had examined the legal position in respect of the volunteer crops. They had informed the Ahmadi community that so long as the volunteers did not transgress the law Government did not propose to take any action but that action under the Criminal Law Amendment Act 1908 would be taken if the activities of the volunteers brought them within the scope of the Act. After an enquiry which resulted in satisfying Government that musketry practice did not take place Government saw no reason to take action either under the Criminal Law Amendment Act in regard to the volunteers or under the Arms Act in regard to musketry practice.

There is evidence to show that the Qadiani community is organised in various departments or *Nazarats*, with establishments

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of their own, record-keepers, copyists, etc. These departmemts are all controlled by the Sadar Anjuman of which Fateh Mohammad (D.W. 21) is the President. It is also proved by the evidence that there were courts, criminal and civil, functioning in Qadian which dealt with non-cognizable criminal cases and civil disputes between members of the Qadiani community, and that these courts inflicted punishment and passed and executed decrees. But there is no evidence that any non-Qadiani was forced to submit to their jurisdiction, no evidence that the supreme authority of the Mirza, secular as well as religious was never questioned and no evidence that any illegal act was done by any of them which was brought to the notice of the Government, or that Government had shut its eyes to this state of affairs in Qadian and had abstained from taking proper action when this was necessary. It is proved that there was in Qadian a volunteer corps, organised on the lines of the Boy Scout movement, armed with lathis and numbering, according to a defence witness, thirty or thirty-five boys and men, that there were congregations of this body in 1932 and 1933 and that they were drilled as if they were armed with bayonets. One defence witness said he had seen them armed with spears. But there is no evidence that this force was used in any criminal activity or was such as to lay open to doubt the power of the authorities to enforce the law of British India in Qadian. The evidence is that the main object of the corps was to help in the arrangements in connection with meetings, etc.

As regards the categorical statement that definite allegations of tyranny prevailing in Qadian were made and no notice was taken of them—learned counsel for the respondent has contended that there is evidence of four instances (and he confesses that he can point to no other instances) in which complaints made to the authorities passed unheeded.

There are (1) the case of Ishar Singh (D. W. 4), (2) the case of Mehr Din (D. W. 52), (3) a report of 31st March 1930 (D. W. 55/3) by Abdul Karim, and (4) a complaint sent to the Deputy Commissioner by Abdul Karim (D. Z/32).

This Ishar Singh is the man who had offered his land for the purpose of the Conference. There is reliable evidence that the wall built round it was upon *Gorah deh* land which belongs to the

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Mirza Sahib's family. Ishar Singh says he was threatened with expulsion and death by the Qadianis. He did not himself report the matter at the *thana* but sent his nephew and another man to do this. It is not proved that a report was made and that any cognizable offence was reported or that any accused was named or that the police took no action. Ishar Singh's evidence does not show therefore that tyranny was reported and overlooked.

(2) Mehr Din's evidence shows that he was able to obtain a decree in the Government Civil Court (Senior Sub-Judge) against the present Khalifa in 1923. He says he was attacked by some of the Ahmadiyyas in 1925. His assailants were challaned and convicted. In 1930 he was turned out of Qadian by the Qadianis and his wife and children were beaten. He reported the matter to the Superintendent of Police but no action was taken. He went to Batala. Four months later he learnt that his shop had been burnt but he does not know who burnt it. He returned to Qadian where he still resides. He lodged no complaint in Court and apparently none at the *thana*. It is not in evidence that any cognizable offence had been committed or that any offender was named. On the other hand, his evidence itself shows that the police gave him protection and actually accompanied him from Qadian to Batala. All this evidence affords no ground for the learned Judge's strictures.

(3) The report of 31st March 1930 was made by Abdul Karim who figures prominently in the defence story. His evidence shows that he had instituted a complaint against Mohammad Amin and the present Khalifa and the former was convicted by the Government Court. Another complaint was dismissed. In March 1930 he learnt that the Qadianis were about to burn his house and he and the other inmates would be killed. He left the house and took refuge in a Sikh boarding house. Next morning the police escorted him to Gurdaspur where he saw the Superintendent of Police. He then made the report of the 31st March 1930. A few days later he heard that the house had been set on fire. On the 23rd April he was returning to Batala from Gurdaspur (where he was being tried for an offence under section 153-A, I. P. C.) when a murderous attack was made on him by one Mohammad Ali. Mohammad Ali wounded him but killed another man, was tried for murder, sentenced to death and hanged. It is not obvious

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what action ought to have been taken by the authorities, on the complaint of the 31st March 1930. The complaint indicates no cognizable offence—no particular action was asked for—nor protection. But there is evidence that the police gave Abdul Karim protection and evidence that when the house caught fire the police extinguished the fire and started an investigation. Abdul Karim's petition which I deal with below mentioned that when he left Qadian the police posted a guard at his house. No paralysis of the authorities is disclosed here.

4. The last complaint mentioned was also made by Abdul Karim. It was sent from Batala after he had left Qadian and before he was injured by Mohammad Ali. In it he complained that two of his servants had been beaten, that obscene pictures had been posted in the office of the *Mubahala* (a paper started by Abdul Karim in 1928 which published articles abusing the Mirza Sahib, the Qadianis, and their religion) that filthy writings had been made on the walls of his house, that armed Qadianis had started hovering round his house, threatening him with murder and that the Inspector of Police had proved by his conduct that he was not prepared to take action against the Qadian Caliph who on March 28th had delivered a provocative address and tried his utmost to incite his followers to kill him. The petition goes on to mention that the police were investigating a case in which Qadianis had beaten the Editor of the *Mubahala*. Then it states that the police constable posted at Abdul Karim's house had been withdrawn. On complaining at the *thana* the petition proceeds to say, Abdul Karim was ordered to stop publication of the *Mubahala*. That night Abdul Karim heard of the danger to his life and left his house. He gave information at the *thana* and the officer in charge put a guard upon his house. The petition next states that the interview with the Superintendent of Police at Gurdaspur showed that he was inclined to help and favour the Qadianis. The Superintendent of Police told Abdul Karim to stop the publication of the *Mubahala* adding that if he did not do so he was likely to be killed and that he himself was powerless. After that the house had been set on fire and the Qadianis were daily passing resolutions that he should be killed.

This petition, it is to be noted, was submitted when action to launch a prosecution against Abdul Karim himself under Section

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153-A, I. P. C., had been taken and warrants had been issued against him and his father, his brother and the Editor of the *Mubahala*. It is in evidence that Abdul Karim's house was upon a site claimed as their own property by the Qadiani family.

Assuming that the local police were not doing their duty properly the evidence of the facts alleged is not evidence from which the inferences made by the learned Judge that the authorities appear to have been paralysed, that no redress for injury could be had, and that no notice appears to have been taken of definite allegations of tyranny prevailing in Qadian, could be drawn. There is no evidence that no action was taken by Deputy Commissioner to whom D. Z/32 was addressed. This being so the Sessions Judge ought not to have denounced the authorities (who were not on their trial), as he has done, without giving them an opportunity of rebutting the evidence given by witnesses called in defence. Such procedure is not fair.

Having said this much I do not think it necessary to delete this passage. It is true that the learned Judge has gone out of his way to comment adversely upon a party not before the Court and that when the evidence is examined it is found wholly insufficient to warrant these comments. But the facts inferred by the Judge are the grounds for his conclusion that the accused should be leniently treated and are important portions of his judgment. Although I am unable to see how the setting up of tribunals by the Qadianis to decide their own disputes, or the organisation of a volunteer corps for their own legal purposes could possibly be regarded as mitigating the offence in this case, it cannot I think be said that evidence to prove that the authorities were lax and allowed the Qadianis to prosecute (*sic.*) the people of their own town in various ways would not in such a case be irrelevant. The passage illustrates the attitude in which the learned Sessions Judge appears to have approached the case, and an examination of the record does not diminish the doubt which the language of many other parts of the judgment also must tend to raise whether the evidence has been properly weighed. No individual, however, has been singled out for censure and it is difficult to believe that such a judgment could in fact injure the authorities to any appreciable extent. For these reasons I do not think it necessary to expunge this passage.

The third and last passage which the Government Advocate

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wishes to have expunged are the words at the end of the judgment. "The offence is a technical one." The correctness of the opinion of the Sessions Judge as to the degree of Sayyad Ata Ullah Shah's culpability is not now open to reconsideration. It is true that the passage is not consistent with other parts of the judgment but this fact is no good reason for ordering it to be expunged. I do not think it necessary to remit the case for further inquiry as asked for in the petition. The Chief Secretary's affidavit rebuts the unfounded inference drawn in the judgment and further proceedings are not likely to prevent more abuse of the process of the courts.

Passages complained of by Ahmadiyya Community

I pass now to the petition presented by Captain Mirza Sharif Ahmad. The petitioner asks for the removal on various grounds of no less than eighteen passages.

I see no justification for the deletion of the first three passages, referred to as *A* *B* and *C* in the petition, which appear to be simple statements of facts historical and proved.

The fourth passage (*D*) runs as follows :—

"There was naturally some opposition and the majority of Mohammadans resented the arrogation of religious supremacy by the Ahmadi Founder. Non-believers in the new-fangled religion vehemently repelled the accusation of *kafar* which was bestowed on them by the Mirza.

"The Qadianis, however, remained heedless to these foreign criticisms and secure in the local safety of their home town, flourished as well as they could in the circumstances. This comparative security of their position gave birth to pride amounting almost to arrogance on the part of the Qadianis.

"In order to enforce their argument and further their cause they called into play weapons which would ordinarily be termed highly undesirable. They not only intimidated the persons who refused to come within their fold with boycott and excommunication and occasionally threats of something worse, but they frequently fortified the process of proselytizing by actually carrying out these threats.

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"A volunteer corps was established in Qadian with the object probably of giving sanction to their decrees."

The use of the word "arrogation" in the first sentence is consonant with the language throughout the judgment, but there is no strong ground for removing it. In the second sentence the word 'new-fangled' is objectionable. It is calculated to offend the followers of the Qadiani religion although possibly the learned Judge did not intend to be derisive when he used it. As already noticed the merits of the Qadiani or any other religion were not before the Court and were wholly irrelevant matters for the purpose of the trial. All revealed religions must be at one time new. I cut out the word 'new-fangled'. The next words objected to before me are :—

"This comparative security of their position gave birth to pride amounting almost to arrogance on the part of the Qadianis." This statement is based on the evidence generally oral and documentary, and though the language might well have been more moderate and the whole sentence is unnecessary I cannot see proper ground for deleting these words. In the behaviour of the Qadianis about which evidence has been given the learned Sessions Judge has found reasons for mitigating the sentence he has imposed. Whether he was right or wrong in this decision is a question which cannot be raised in a petition of this kind. The learned Judge had authority in at least one judgment of this Court, *Crown* v. *Raj Pal* (I. L. R. 7 Lah. 15) for the proposition that it is open to a person accused of an offence under section 153-A, I. P. C. to plead the truth of the statements, for making which he is prosecuted, for the purpose of showing his real intention in making them, and in support of a plea for mitigation of sentence. The explanation to Section 153-A itself appears to predicate this and no authority has been cited for the view that evidence of the truth of the offending words is not a relevant matter for the purpose of a trial under that section. I am not, therefore, prepared to say here that the trial Magistrate was wrong in allowing the production of evidence to prove the truth of the assertions made by the respondent in his speech, and that therefore any inference by the learned Sessions Judge drawn from this evidence must be regarded as irrelevant. On the other hand there can be no doubt that to make such evidence relevant there must be some proximate relationship between the

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fact urged in support of the plea and the action for which the accused has been prosecuted. If evidence is put forward to prove some fact wholly unrelated to the circumstances of the alleged offence, which, if proved, could not show that the action of the accused was honest, or that he had provocation or some other excuse for the action, then that evidence would certainly be irrelevant, and the rention in a judgment of remarks based on it may, if they adversely affect a person, or are otherwise offensive or unnecessary, be such an abuse of the process of the law as to warrant their being expunged.

Volunteer Corps.

I come to the words " In order to enforce their argument and further their cause they called into play weapons which would ordinarily be termed highly undesirable. They not only intimidated the person who refused to come within their fold with boycott and ex-communication and occasionally threats of something worse, but they frequently fortified the process of proselytising by actually carrying out these threats. A voluntary corps was established in Qadian with the object probably of giving sanction to their decrees." This is not altogether an accurate description of the evidence. There is no evidence that the Qadianis intimidated persons who refused to come within their fold other than persons belonging to their Community who had left it or had quarrelled with them. There is ample evidence of which there is corroboration in the statement of the Mirza Sahib himself, that persons who had become abnoxious to the Community were ex-communicated or forced by social pressure to leave Qadian, though there is very little to indicate that this pressure was brought to bear illegally. So far as " threats of something worse " are concerned there is the evidence (*sic.*) Abdul Karim that he was threatened with death. The learned Sessions Judge has believed this. I have already referred to the evidence about the volunteer corps. There was a corps but there is no evidence that it was illegally employed and there is no basis for the remarks that it was established probably to give sanction to the decrees of the Community. I do not think it necessary to expunge this passage.

The fifth and sixth passages (*E* and *F*) contain remarks based upon evidence. It is proved as I have already noted that the Qadiani courts dealt with criminal and civil cases, awarded punishments and passed and executed decrees but it is not proved

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that they did so illegally or that they dealt with disputes between others than Qadianis. It is difficult to understand why the learned Sessions Judge has found in these facts ground for mitigating the punishment in this case. He has, however, done so and that ends this particular matter.

There is no proper ground for deleting the passages F. 1 and F. 2.

The passage (*G*) is as follows :—

"Bhagat Singh D. W. 49 stated that he was assaulted by the Mirzais. One Shah Gharib was beaten by the Qadianis and when he tried to start a case no body came forward to give evidence on his behalf."

It is contended that the learned Sessions Judge has wrongly attributed the acts of individuals to the whole Community and that the evidence does not bear out the statement about Gharib Shah. The evidence of Bhagat Singh is that he was beaten by an Ahmadiyya missionary and others after an altercation with an Ahmadiyya *muballigh*. It is of course possible that he was beaten with good reason.

As regards Gharib Shah the evidence is that he was a missionary of the Ahrars and was beaten by the Ahmadis (Feroz Din, Head Constable Qadian, P. W. 6), and was threatened with beating by fifty or sixty Ahmadis. I can find no evidence that no one came forward to give evidence for him. There is, however, no good reason for deleting this passage which injures no one now.

The next passage objected to (*G, I*) is :

"Decrees of court are enforced and there is one instance of a decree for the sale of a house having been executed. Privately stamped paper is manufactured, sold and used for petitions to the Mirza."

There is evidence that a house was sold after a decree had been given, though it is not clear that the sale was enforced. Privately stamped paper was manufactured (but this has been

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discontinued). The contention of the petitioner is that the stamped paper was for petitions to be presented to the President of the Local Anjuman and not to the Mirza Sahib. The Mirza Sahib was the final court of appeal in some cases and I see no reason for deleting these words.

The next two passages (*H* and *I*) which the Court is asked to expunge run as follows :—

Abdul Karim

(*H*) "Then we have the most serious case of Abdul Karim whose story is a veritable tale of woe. This man embraced the Ahmadiyya religion and went to Qadian. There, however, he became a prey to religious doubts and renounced the Ahmadiyya faith. Then his prosecution (*sic.*) started. He began to edit a paper called *Mubahala* which aimed at criticising the cult of the Ahmadiyya community. The Mirza in a speech reported in Exhibit D. Z./39 prophesied and compassed the death of the publishers of the *Mubahala*. This speech made reference to the people who were ready to kill for the sake of their religion. A murderous attack was made on Abdul Karim soon after this but he escaped."

(*I*) "The death sentence was in fact carried out and after his execution the dead body was brought to Qadian and buried in great style in what is called the *Bahishti Maqbara* (the heavenly graveyard). The murder was extolled and the act of the murderer was praised in *Al-Fazal*, the organ of the Ahmadiyya community. It was given out that the murderer was not guilty and that he had escaped the calumny of death by expiring before the event. God in His justice had thought fit to take away his life before he underwent the ignominy of hanging. The Mirza when examined in court with respect to this incident told a different tale and stated that the murderer of Mohammad Hussain was given a decent burial as he had repented of his offence and was purged of his sin. Exhibit D. Z./40, however, contradicts this and the intentions and attitude of the Mirza are plain from the expression of his views as set out in D. Z/40. Incidentally the contents of this document amount to contempt of the Lahore High Court."

Reference has already been made to Abdul Karim and his story. It is true that the story is a tale of woe but his own behaviour seems to have been partly the cause of his afflictions.

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The evidence is that he was an Ahmadi and settled in Qadian in 1914. He renounced the Qadiani faith in 1914* and fourteen years later started the *Mubahala*, in which he denounced the Qadianis. Conditions in Qadian (which town as already noted belongs to the Mirza Sahib's family) were made so difficult for him that in March 1930 he left his house and after spending a night in the shelter of the Khalsa boarding house was escorted by the police to Gurdaspur. On the 28th March, 1930, the Khalifa delivered a sermon (Ex. D. Z. 39) in which, speaking of some 'hypocrites who had severed themselves from the Community and were carrying on foul propaganda against him' he stated that 'Allah the most High had consummated their moral death' and that 'their physical death also will, God willing, approach them with heavenly tortures.' The sermon was published in the *Al-Fazal*, a Qadiani publication, owned by the Sadar Anjuman-i-Qadian, on the 1st April 1930. On the 23rd April Abdul Karim was attacked, as I have mentioned above, by Mohammad Ali who killed another man, Mohammad Hussain, in the assault. Mohammad Hussain was Abdul Karim's surety at the trial in which Abdul Karim was accused under Section 153-A, I. P. C. After Mohammad Ali had been hanged, his body was brought to Qadian and honoured by burial in the *Bahishti Maqbara* or heavenly grave-yard. The Mirza Sahib led the funeral prayer and preached a sermon (Ex. D. Z./40) which was published in the *Al-Fazal* of the 18th July 1931 under the heading "The Qazi Sahib has not murdered any man. Why the Qazi Sahib is deserving of praise." The Qazi Sahib was Muhammad Ali. The sermon did not extol the murder but certainly praised Muhammad Ali for the religious zeal he had displayed in sacrificing himself for the sake of truth ("because he spoke the truth and adhered to it"). The sermon at one place referred to the judgment of this Court confirming the death sentence on Muhammad Ali in the following words :—"We are not bound by the judgment of the Court. The Court has done its work and following its own opinion has hanged him. But we are not bound to take the decision of the Court as correct. It based its decision on its own-view points. The Court was not so well acquainted with his truthfulness as we are....."

The *Al-Fazal* of the 6th June 1931, had published another

*Here there seems to be a misapprehension, Abdul Karim renounced Ahmadiyyat in 1928, and he started the *Mubahala* the same year.—*Ed.*

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Friday sermon (Ex. D. Z/52) delivered by one Maulvi Sher Ali on the 22nd May 1931. The sermon praised Muhammad Ali for having stated and adhered to the truth at his trial and so having set an example which would endure until doomsday. It also gave reasons for believing that he had expired before he was actually hanged.

I can see no sufficient reason for expunging the whole of these passages *H* and *I*. But there is no foundation for the statement that the Khalifa had compassed the death of the publishers of the *Mubahala*. For the murder of Muhammad Hussain, Muhammad Ali had been hanged. There is nothing on the record to show that the Khalifa had been accused of the murder or that he had intentionally brought about his death. The murderer was a resident of the Frontier Province. The Khalifa in the witness-box declared that the Ahmadiyya community had no hand in the murder of Muhammad Hussain. The words " and compassed " condemn the Mirza Sahib without trial. These words will be expunged.

Mohammad Amin.

The passage (*J*) " Muhammad Amin, although he was an Ahmadi, had incurred the displeasure of the Mirza and was, therefore, not a *persona grata* " is objected to on the ground that the evidence shows that Muhammad Amin, who had been a Qadiani missionary was dismissed from his office (a preacher) not because he had incurred the displeasure of the Mirza Sahib but was dismissed by Fateh Mohammad (P. (*sic.*) W. 21) as the latter had found him to be dishonest. There is no direct evidence that Mohammad Amin was a person disliked by the Mirza. The Mirza Sahib himself was not questioned about the relations between himself and Mohammad Amin but the statement in the judgment objected to is an inference which could reasonably be drawn from the circumstances disclosed generally by the evidence. The passage must, therefore, stand.

The next passage referred to in the petition (*K*) is as follows :—

" After Abdul Karim was turned out of Qadian his house was burnt down. An attempt was made to demolish it in a quasi-legal manner by obtaining an order from the Small Town Committee of Qadian. These regrettable incidents point to a state of lawlessness accompanied by arson and murder in Qadian. Add to this the circumstance that the Mirza of Qadian spoke of the millions of Mohammadans who did not believe in his supremacy in the most

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abusive language. His writings furnish a curious commentary on the manners and methods of a pious high priest who not only claims to be a Prophet but professes to be the chosen one of God, the Masih-us-Sani (the second Masiha)."

I have already referred to the case of Abdul Karim at some length. It is contended for the petitioner that these observations are not supported by the record, are untrue, or a distortion of facts, and the truth is that Abdul Karim owned no house and was not turned out and that action was taken by the Small Town Committee in a correct and legal manner to have the house demolished because it was in a dilapidated condition. There is no doubt that Abdul Karim left Qadian because he was in fear of his life. It is in evidence that when the Small Town Committee served him with a notice regarding the dilapidated state of his house, he took a photograph of it and submitted it with a petition to the Small Town Committee, and that ultimately the house was not demolished in pursuance of the notice. The house was burnt after Abdul Karim left Qadian. It was taken possession of in 1933 by the petitioner Mirza Sharif Ahmad, who is Naib Nazir of the Education Department. The latter's explanation as a defence witness is that the site was within the limits of the *Shamilat deh* which belonged to the proprietors of Qadian by whom Abdul Karim's father had been permitted to build upon it. In 1930 Fazal Karim, Abdul Karim's father, left the house and when Mirza Sharif Ahmad took possession of it in 1933, only the material and one or two walls were in existence. The walls were demolished by Mirza Sharif Ahmad's Mukhtar and the site was made over to the local Anjuman.

Irrelevant, Unnecessary and Offensive.

From this evidence and the other evidence to which I have referred in this judgment the learned Sessions Judge has drawn the conclusion that a state of lawlessness accompanied by arson and murder existed in Qadian. The inference is perhaps a bold one. Besides Abdul Karim's house one other building is said to have been burnt by the Qadianis. It is not shown that in killing Mohammad Amin, Fateh Mohammad committed murder. The murder of Mohammad Hussain and the wounding of Abdul Karim by Mohammad Ali did not take place in Qadian. But I do not think that it can be said that there is no evidence upon the record from which the inference—although another Judge might not have considered it justified by the evidence—could have been drawn. It is admitted before me by counsel on both sides that there is

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evidence that in his writings the Mirza Sahib Ghulam Ahmad did abuse those who differed from his religious views and questioned them in their writings. But objection is taken to the statement that he spoke of the " millions of Mohammadans who did not believe in his supremacy in the most abusive language " because the Mirza Sahib's attack was not upon all Mohammadans but only upon his particular personal enemies. It is, however, undisputed that these particular enemies were orthodox Mohammadans. On the other hand, what the Mirza Sahib said and did thirty, forty or fifty years ago could not possibly afford any provocation for promoting enmity between the Ahrars and the Qadianis in 1933, and the evidence on which the learned Sessions Judge has based his remark is, therefore, not relevant matter. The last two sentences in this passage are irrelevant, unnecessary and offensive and I order them to be deleted. The rest of the passage will stand.

The next passage (*L*) which it is sought to have expunged is as follows:— " This step was naturally resented by the Qadianis and they made a bold attempt to stop the Conference from being held altogether. The Ahrar Conference had acquired the land of one Ishar Singh for the purpose of their meeting. The Qadianis took possession of the land and built a wall on it. This deprived the Ahrars of the only piece of land in Qadian. They were, therefore, forced to convene their meeting at a spot about a mile from Qadian. The building wall shows the bitterness of the feelings that obtained between the parties at the time and the arrogance of the Ahmadis who felt that they were immune from the lawful consequences of their highhandedness ".

The words of this passage while they indicate clearly the position from which the learned Sessions Judge chose to view the case, are not such as can be deleted on the ground that their retention will be an abuse of the process of the court.

I have no hesitation in ordering to be expunged the next passage to which the petition relates (*M*). What the Founder of the Qadiani religion ate and drank could not possibly be relevant for the purposes of deciding what punishment should be imposed upon the accused in the present case. It is unnecessary and offensive and should not have found a place in the judgment.

Irrelevant Passage

There remains only the passage (*N*), in which the learned

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Sessions Judge has given his reasons for holding that the offence of Ata Ullah Shah Bukhari was merely technical. Here again the petitioner's objection is that Mirza Ghulam Ahmad Sahib in the writing to which the learned Sessions Judge refers was not abusing all the Mohammadans of India but merely his own personal and religious enemies. Whether this objection be well founded or not, it is obvious that what was said by Mirza Ghulam Ahmad in the last century can have no relevancy when the matter under consideration is the punishment to be imposed on a person who has been convicted now under Section 153-A of promoting feelings of enmity or hatred between Qadianis and other Mohammadans. I order that the passage from the words "and the extreme resentment", to the word "bitches" be expunged from the judgment.

(Sd.) J. COLDSTREAM,
JUDGE.

Dated 11-11-1935.

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PRECIOUS GEMS

The Holy Prophet says :—

Kill not your hearts with excess of eating and drinking.

The most excellent Jihad (Holy War) is that for the conquest of self.

Illumine your hearts by hunger, and strive to conquer your self by hunger and thirst; continue to knock at the gates of Paradise by hunger.

An hour's contemplation is better than a year's adoration.

Charity is a duty unto every Muslim. He who hath not the means thereto, let him do a good act or abstain from an evil one. That is his charity.

Almsgiving is a duty unto you. Alms should be taken from the rich and returned to the poor.

He who believeth in one God and in a future life (*i. e.* a Muslim) let him honour his guest.

Hell is veiled in delights, and Heaven in hardships and miseries.

Do not speak ill of the dead.

Every child is born with a disposition towards the natural religion (Islām). It is the parents who make it a Jew, a Christian or a Magian.

Philosophy is the stray camel of the Faithful; take hold of it wherever ye come across it.

Go in quest of knowledge even unto China.

Seek knowledge from the cradle to the grave.

Prayer is the mi'rāj (union with, or annihilation in, the Divine Essence by means of continual upward progress) of the Faithful.

All actions are judged by the motives prompting them.

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ISLAM AND CHRISTIANITY

"Over a large portion of the world, Islam as a missionary religion is more successful than Christianity. Not only are the Moslem converts from paganism more numerous than the Christian converts, but Christianity in some regions is actually receding before Islam, while attempts to proselytize Muhammadan nations are notoriously unsuccessful. We not only do not gain ground, but even fail to hold our own. The faith of Islam already extends from Morocco to Java, from Zanzibar to China, and is spreading across Africa with giant strides..... It is not the first propagation of Islam that has to be explained; but it is the permanency with which it retains its hold upon its converts. Christianity is less tenacious in its grasp. An African tribe once converted to Islam never reverts to paganism, and never embraces Christianity...

What Islam Does

"Islam has done more for civilization than Christianity. Take, for example, the statements of English officials or of lay travellers as to the practical results of Islam. When Muhammadanism is embraced by a negro tribe, paganism, devil-worship, fetishism, cannibalism, human sacrifice, infanticide, witchcraft at once disappear. The natives begin to dress, filth is replaced by cleanliness, and they acquire personal dignity and self-respect. Hospitality becomes a religious duty, drunkenness becomes rare, gambling is forbidden, immodest dances and the promiscuous intercourse of the sexes cease, female chastity is regarded as a virtue, industry replaces idleness, licence gives place to law, order and sobriety prevail, blood feuds, cruelty to animals and to slaves are forbidden.

"A feeling of humanity, benevolence and brotherhood is inculcated. Polygamy and slavery are regulated and their evils are restrained. Islam, above all, is the most powerful total abstinence association in the world, whereas the extension of European trade means the extension of drunkenness and vice, and the degradation of the people; while Islam introduces a civilization of no low order, including a knowledge of reading and writing, decent clothing

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personal cleanliness, veracity and self-respect. Its restraining and civilizing effects are marvellous.....We ought to begin by recognizing the fact that Islam is not an anti-Christian faith.....Judaism was exclusive, Islam is cosmopolitan—not like Judaism, confined to one race, but extended to the whole world...

A Masculine Protest

"There is nothing in the teaching of Muhammad antagonistic to Christianity. It is mid-way between Judaism and Christianity. The reformed Judaism swept so swiftly over Africa and Asia because the African and Syrian doctors had substituted metaphysical dogmas for the religion of Christ. They tried to combat licentiousness by celibacy and virginity. Seclusion from the world was the road to holiness, and dirt was the characteristic of monkish sanctity. The people were practically polytheists, worshipping a crowd of martyrs, saints and angels. Islam swept away this mass of corruption and superstitions. It was a revolt against empty theological polemics; it was a masculine protest against the exaltation of celibacy as a crown of piety. It brought out the fundamental dogma of religion—the unity and greatness of God. It replaced monkliness by manliness. It gave hope to the slave, brotherhood to mankind, and recognition to the fundamental facts of human nature.

Social Equality

"The virtues which Islam inculcates are what the lower races can be brought to understand—temperance, cleanliness, chastity, justice, fortitude, courage, benevolence, hospitality, veracity and resignation. They can be taught to cultivate the four cardinal virtues, and to adjure the seven deadly sins. The Christian ideal of the brotherhood of man is the highest, but Islam preaches a practical brotherhood—the social equality of all Muslims.....The convert is admitted at once to an exclusive social caste : he becomes a member of a vast confraternity of 105,000,000. [700,000,000 according to the latest figures.—*Ed.*] A Christian convert is not regarded as a social equal, but the Muslim brotherhood is a reality. We have over much dear brethren in the reading desk but over little in daily life.

Slavery and Polygamy in Islam

"The two great practical difficulties in the way of the conversion of Africa are polygamy and domestic slavery. Muhammad,

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like Moses, did not prohibit them; that would have been impossible but he endeavoured to mitigate their evils. Slavery is no part of the creed of Islam. It was tolerated as a necessary evil by Muhammad as it was by Moses and St. Paul. In the hands of the Muslim it is a very mild institution, far milder than negro slavery in the United States. Polygamy is a more difficult question. Moses did not prohibit it. It was practised by David, and it is not directly forbidden in the New Testament. Muhammad limited the unbounded licence of polygamy; it is the exception rather than the rule in the most civilized Muslim lands, European Turkey, Algiers and Egypt. Polygamy, with all its evils, has its counterbalancing advantages. It has abolished female infanticide and given every woman a legal protector. Owing to polygamy, Moslem countries are free from professional outcasts, a greater reproach to Christendom than polygamy is to Islam. The strictly regulated polygamy of Muslim lands is infinitely less degrading to woman and less injurious to men than the promiscuous polyandry which is the curse of Christian cities and which is absolutely unknown in Islam. The polyandrous English are not entitled to cast stones at polygamous Muslims. Let us first pluck out the beam from our own eye before we meddle with the mote in our brother's eye. The four evils of Muslim lands—polygamy, slavery, concubinage and licence of divorce—are no exclusive reproach to Islam. Within our own memory, if not now, they have all prevailed in aggravated forms in the United States—a land nominally Christian peopled by a race of English brotherhood.

"Let us remember that in some respects Muslim morality is better than our own. In resignation to God's will, in temperance, charity, veracity and in the brotherhood of believers, they set us a pattern which we should do well to follow. Islam has abolished drunkenness, gambling and prostitution—the three curses of Christian lands."

—*The Times* (London).

The Ahmadiyya Movement

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THE Ahmadiyya Movement was founded by Hazrat Ahmad, the Promised Messiah and Mehdi and the expected Messenger of all nations. In the spirit and power of all the earlier prophets he came to serve and reinterpret the final and eternal teachings laid down by God in the Holy Quran. The Movement therefore represents the true and real Islam and seeks to uplift humanity and establish peace throughout the world. Hazrat Ahmad died in 1908, and the present Head of the Movement is his second successor, Hazrat Mirza Bashir-ud-Din Mahmud Ahmad, under whose direction the Movement has established Missions in many parts of the world, the following being the addresses of some of them:

(1) THE LONDON MOSQUE, 63, Melrose Road,
Southfields, London, S. W. 18, England.

(2) THE AHMADIYYA MOVEMENT IN ISLAM,
Sufi M. R. Bengalee, M.A.,
56 E. Congress St., Suite 1307,
Chicago, Illinois, U. S. America.

(3) THE AHMADIYYA MOVEMENT,
P. O. Box 39, Salt Pond,
Gold Coast, West Africa.

(4) THE AHMADIYYA MOVEMENT,
Rose Hill, Mauritius.

(5) THE AHMADIYYA MOVEMENT,
P. O Box 727, Lagos,
Nigeria, W. Africa.

(6) THE AHMADIYYA MOVEMENT,
Box No. 305, G. P. O.
Perth, W. Australia.

(7) THE CENTRAL (E.A.) AHMADIYYA
MUSLIM ASSOCIATION,
P. O. Box No. 554, Nairobi
(Kenya Colony.)

(8) MAULVI ABUL 'ATA, Maulvi Fazil,
Mount Carmel, Haifa, Palestine.

(9) MAULVI RAHMAT ALI, Oetœsan Ahmadiah,
Defensielijn V/d Bosch, No. 139, Batavia Centrum, Java.

(10) MAULVI MOHD SADIQ, H.A., Oetœsan Ahmadiyya
Padang—(Sumatra.)

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